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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,457	12/04/2003	Dana Paul Gruenbacher	8601MC	7150

27752 7590 06/02/2004

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EXAMINER

PRUNNER, KATHLEEN J

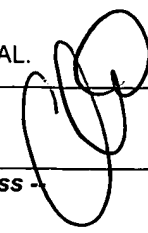
ART UNIT

PAPER NUMBER

3751

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/727,457	Applicant(s) GRUENBACHER ET AL.	
	Examiner Kathleen J. Prunner	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>030404</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because: (A) the cross hatching used in Figs. 1 and 2 is inappropriate since such cross hatching indicates metal (see M.P.E.P. § 608.02) rather than fluids or chemical components or cloth/fabric/paper (note the drawing symbols located at the end of § 608.02); (B) Fig. 1 contains two different views of the applicator which should be separately numbered; (C) the line sections of the right hand part in Fig. 1 and in Fig. 2 constitute improper cross sectional views; and (D) in Fig. 2, it is unclear as to what the bulbous portions at the ends of further layer 356 constitute. A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters “318”, “360” and “364” have all been used to designate the same identical portion in Fig. 2. A proposed drawing correction is required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference signs **not mentioned** in the description: **354, 358, 366 and 370** (note Fig. 2). A proposed drawing correction or amendment to the specification to add the reference signs in the description are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

Specification

5. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. **Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.** If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

6. The disclosure is objected to because of the following informalities: (A) on page 1, the title is in bold type; and (B) the section headings and examples use underlining. Appropriate correction is required.

Art Unit: 3751

7. The following informalities in the specification are noted: (A) on page 1, the title of the invention fails to correspond with that given in the declaration; (B) on page 2, line 19, "it" should be deleted; (C) on page 2, line 29, "synthetic" is misspelled; (D) on page 3, line 1, a period should be inserted after "these"; (E) on page 3, line 5, a comma should be inserted directly after "reactant" (second occurrence); (F) on page 3, lines 9-10, "according to any one of the preceding claims" is ambiguous and should be deleted; (G) on page 3, line 25, "s" should read --As--; (H) on page 5, lines 25 and 29, the meaning of "HEF" should be clarified ; (I) on page 6, the underlined portions used on lines 22-25, on page 16, the underlined portion used on line 34, on page 18, the underlined portions used on lines 21-22, on page 22, the underlined portion used on line 28, and on page 26, the underlined portion used on line 5, are improper since only Reissue applications are permitted to use underlining; (J) on page 7, lines 3, 5 and 6, the meaning of "LLDPE" should be clarified; (K) on page 7, line 4, the meaning of "PP" in "PP/Rayon" should be clarified; (L) on page 8, the trademark designation for "CLIFF" is lacking on lines 1, 4 and 6; (M) on page 8, lines 2, 5 and 6, the meaning of "LDPE" should be clarified; (N) on page 8, lines 3 and 7, a period should be inserted after "coating"; (O) on page 8, line 14, -a-- should be inserted after "has"; (P) on page 9, lines 8, 10 and 11, the meaning of "T_g" should be clarified; (Q) on page 10, line 21, --a-- should be inserted after "by"; (R) on page 10, line 26, the meaning of "PET" should be clarified; (S) on page 12, line 23, the trademark should be capitalized; (T) on page 14, line 9, --in-- should be inserted after "punched"; (U) on page 14, line 33, "(330)" should be deleted so as to correspond with line 16; (V) on page 15, lines 1 and 5 are inconsistent in describing element 356; (W) on page 18, the italics used on lines 14 and 15 is improper since only Reissue applications are permitted to use italics; (X) on page 23, line 10, the meaning of "HLB" should be clarified; (Y) on page 24, the trademarks on lines 20 and 21 should be properly capitalized; (Z) on page 24, line 32, and on page 25, line 1, the meaning of "KSG" should be clarified; (AA) on page 25, line 10, the meaning of "MW" should be clarified; (BB) on page 25, line 19, the meaning of "O/W" should be clarified; (CC) on page 25, line 23, the

Art Unit: 3751

meaning of “RV” should be clarified; and (DD) on page 25, line 24, the meaning of “TD” should be clarified. Appropriate correction is required.

8. The following informalities in the claims are noted: (A) in claim 1, on line 1, the semi-colon should be changed to a colon; (B) in claims 14 and 16, on line 2, “synthetic” is misspelled; (C) in claim 21, on line 1, the semi-colon should be changed to a colon; and (D) in claim 21, on line 2, a comma should be inserted directly after “applicator” (first occurrence). Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 8 and 9 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “the fluid storage layer according to the invention may comprise batting, sponge or foam” (note line 18 on page 2), does not reasonably provide enablement for “the fluid storage layer is selected from the group consisting of ‘batting, sponge, foam and combinations thereof’ ”, as called for by claim 8. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 7, 8 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

13. Claim 7 contains the trademark/trade name CLIFF. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim

Art Unit: 3751

does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify a cloth like formed film and, accordingly, the identification/description is indefinite.

14. Claims 13 and 15 contain a term lacking proper antecedent basis. The claims recite the limitation “the opposite side” in line 2. There is insufficient antecedent basis for this limitation in the claims.

15. In claim 13, the meaning of “the opposite side of the flow control layer ‘to the fluid storage layer’ ” is indefinite since the structural relation of the fluid storage layer to a side of the flow control layer has not been recited.

16. Claim 14 contains a term lacking proper antecedent basis. The claim recites the limitation “the skin contact layer material” in line 1. There is insufficient antecedent basis for this limitation in the claim.

17. In claim 15, the meaning of “the opposite side of the fluid impermeable layer ‘to the fluid storage layer’ ” is indefinite since the structural relation of the fluid storage layer to a side of the fluid impermeable layer has not been recited.

18. Claim 16 contains a term lacking proper antecedent basis. The claim recites the limitation “the hand contact layer material” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 1-8 and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fields et al. (WO 01/26528 A1) in view of D'Alessio et al. Fields et al. disclose a disposable fluid applicator (note lines 12-15 on page 7 and lines 9-10 on page 8) having the claimed features including a substrate and a fluid, the substrate comprises in succession a flow control layer (constituted by the flow restriction layer 37 (note lines 9-25 on page 15)), a fluid storage layer (constituted by reservoir 30 and back panel 26 (note from line 33 on page 25 to line 3 on page 26)), and a fluid impermeable layer (constituted by barrier layer 25 (note lines 1-5 on page 23)). Fields et al. also disclose that the reservoir can be of any suitable size, and hence hold any suitable amount of fluid, for the fluid to be dispensed and dispersed (note lines 24-27 on page 9). Although Fields et al. fail to disclose that at least 0.5 milliliters of fluid are present in the fluid storage layer, attention is directed to D'Alessio et al. who disclose another disposable fluid applicator having a reservoir constituted by an ampoule that can contain very small to very large amounts of fluid such as from 0.6 ml to 10 ml or more depending on the type of application for which the applicator is to be used and the desired size of the applicator to be used (note lines 32-39 in col. 5). It would have been obvious to one of ordinary skill in the disposable fluid applicator art, at the time the invention was made, to provide the fluid storage layer in Fields et al. with at least 0.6 ml of fluid in view of the teachings of D'Alessio et al. in order to provide a fluid applicator with an adequate supply of fluid to be dispensed depending upon the type of application for which the applicator is to be used and the desired size of the applicator to be used. With respect to claim 4, Fields et al. additionally disclose that the fluid can be a liquid, a gel, a lotion, a cream and a powder (note lines 27-28 on page 9). With respect to claim 5, Fields et al. also disclose that the fluid comprises an active agent of skin treating agents, cleansing surfactants, coloring agents, anti-acne actives, anti-fungal actives, anti-inflammatory actives, sunscreen actives, vitamin compounds, artificial tanning actives, anti-wrinkle actives and anti-microbial actives (note Example 2 on pages 50-52). With regard to claim 6, Fields et al. further

Art Unit: 3751

disclose that the flow control layer can be an apertured film, non-wovens and wovens (note lines 10-13 on page 15). With respect to claim 7, Fields et al. also disclose that the flow control layer comprises a CLIFF™ type film (note lines 19-20 on page 15). With respect to claim 8, Fields et al. additionally disclose that the fluid storage layer (constituted by back panel 26) can be a batting (note lines 10-11 and 19-22 on page 26) and a sponge or foam (note lines 22-24 on page 26). With regard to claim 10, Fields et al. also disclose that the fluid storage layer comprises a dosing reservoir 30 capable of containing and dispensing fluid. With respect to claim 11, Fields et al. further disclose that the reservoir 30 is rupturable (note lines 14-17 on page 10). With regard to claim 12, Fields et al. additionally disclose that the fluid impermeable layer (constituted by barrier layer 25) can be formed of polymer films (note lines 4-5 on page 23). With regard to claim 13, Fields et al. further disclose a skin contact layer (constituted by front panel 24 (note lines 21-23 on page 18)) located on a side of the flow control layer 37 that is opposite to the side on which the fluid storage layer 30,26 is disposed (note Fig. 2). With respect to claim 14, Fields et al. additionally disclose that the skin contact layer 24 can be formed from nonwoven materials (note lines 21-22 on page 18) and synthetic sponge (note lines 23-24 on page 18). With regard to claim 15, Fields et al. also disclose a hand contact layer 32 (note lines 13-15 on page 23) located on a side of the fluid impermeable layer 25 that is opposite to the side on which the fluid storage layer 30,26 is disposed (note Fig. 2). With regard to claim 16, Fields et al. further disclose that the hand contact layer 32 can be formed of fibrous natural or synthetic or combinations thereof materials and foamed materials (note lines 15-16 on page 23). With respect to claim 17, Fields et al. additionally disclose a temperature change element for heating or cooling the substrate, the fluid or both (note from line 27 on page 35 to line 16 on page 45). With respect to claim 18, Fields et al. also disclose that the temperature change element provides heat from a chemical reaction, the heat of solution, crystallization (note lines 30-32 on page 35) and mixtures thereof. With regard to claim 19, Fields et al. further disclose that the temperature change element is a cooling element wherein the cooling is provided by an endothermic chemical reaction (note lines 29-30 on page 35). With regard to claim 20, Fields et al. additionally disclose a catalyst chamber

Art Unit: 3751

(note Fig. 34) containing a catalyst and a separate reactant chamber containing a reactant wherein the reactant and catalyst chambers are rupturable so that on rupture their respective contents mix to initiate the reaction and generate the temperature change (note lines 3-10 on page 36). With respect to claim 21, Fields et al. also disclose a method of applying the fluid to the skin of a user by the steps of holding the applicator and wiping it onto the skin (note lines 26-28 on page 51).

21. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fields et al. in view of D'Alessio et al. as applied to claims 1-8 and 10-21 above, and further in view of Rabenecker et al. Fields et al. also disclose that the fluid storage layer 26 is formed of absorbent material which may comprise man-made fibers derived from cellulose such as rayon and cellulose acetate or absorbent foams (note lines 3-4 and 19-24 on page 26). Although Fields et al. fails to disclose that the fluid storage layer comprises viscose fibers, attention is directed to Rabenecker et al. who disclose another fluid storage layer comprised of absorbent foam or viscose fibers (note lines 20-22 and 24-28 in col. 2). It would have been obvious to one of ordinary skill in the absorbent material art, at the time the invention was made, to substitute for the absorbent material of Fields et al., the absorbent material formed of viscose fibers as, for example, taught by Rabenecker et al. wherein so doing would amount to mere substitution of one absorbent material for another that would work equally well in the Fields et al. device.

Conclusion

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kathleen J. Prunner whose telephone number is 703-306-9044.

23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

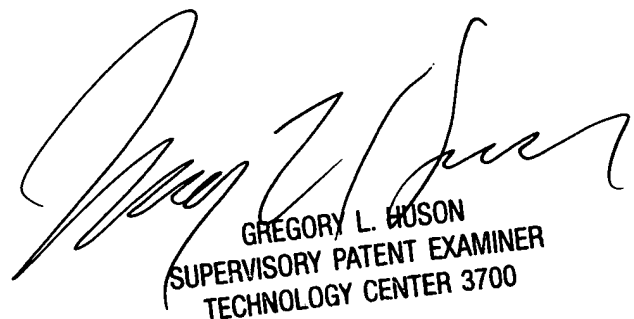
Art Unit: 3751

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

May 19, 2004



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